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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

RICHARD ZEITLIN, ADVANCED  
TELEPHONY CONSULTANTS, MRZ  
MANAGEMENT, LLC, DONOR  
RELATIONS, LLC, TPFE, INC., AMERICAN  
TECHNOLOGY SERVICES, COMPLIANCE  
CONSULTANTS, CHROME BUILDERS  
CONSTRUCTION, INC., UNIFIED DATA  
SERVICES;

Plaintiffs,

v.

BANK OF AMERICA, N.A. and JOHN AND  
JANE DOES 1-100,

Defendants.

Case No.: 2:18-cv-01919-RFB-DJA

**STIPULATION AND ORDER FOR  
EXTENSION OF TIME FOR  
DISPOSITIVE MOTIONS AND  
PRETRIAL ORDER (FIFTH  
REQUEST) AND PARTIES' SECOND  
REQUEST AND STIPULATION TO  
TAKE DEPOSITIONS OUTSIDE OF  
DISCOVERY PURSUANT TO RULE  
16(b)(4)**

Plaintiffs Richard Zeitlin, Advanced Telephony Consultants, MRZ Management, LLC, Donor Relations, LLC, TPFE, Inc., American Technology Services, Compliance Consultants, Chrome Builders Construction, and Unified Data Services ("Plaintiffs") and Defendant Bank of America, N.A. ("BANA" and together with Plaintiffs the "Parties" and each a "Party"), through their counsel of record, hereby respectfully request the Court enter an order, pursuant to Local Rules IA 6-1 and 26-3, extending the deadlines for dispositive motions and the pretrial order set

1 forth in the Court's Order entered on May 23, 2019 (ECF No. 35), as amended by so-ordered  
 2 stipulations of the Parties on September 3, 2019, December 2, 2019, March 3, 2020, June 16,  
 3 2020, September 21, 2020, and November 20, 2020. (ECF Nos. 40, 45, 47, 60, 83, and 87)  
 4 (collectively the "Scheduling Order"). The Parties also request that this Court grant the Parties  
 5 leave to take three depositions outside of the discovery period. The purpose of this stipulation is  
 6 to designate three depositions to be taken outside the discovery period and extend the deadline for  
 7 dispositive motions and the related pretrial order deadline by 60 days from the last scheduled  
 8 deposition date of March 24, 2021. This is the fifth request by the Parties to extend the dispositive  
 9 motion/pretrial order deadlines and second request to take depositions after the close of  
 10 discovery. The Parties do not propose extending any other deadlines.<sup>1</sup>

11 The deadline for dispositive motions that the Parties are seeking to extend has not expired.  
 12 That deadline, which is the next deadline in the Scheduling Order, is March 22, 2021.

### 13 I. Discovery Completed

14 The Parties have completed the following discovery:

- 15 1. All Parties have completed initial disclosures.
- 16 2. Plaintiffs have propounded requests for production of documents, requests for  
 17 admission, and interrogatories on BANA.
- 18 3. BANA initially responded to Plaintiffs' written discovery with timely responses  
 19 and objections and made two productions of documents.
- 20 4. BANA propounded requests for production of documents, requests for admission,  
 21 and interrogatories on the Plaintiffs.
- 22 5. The Plaintiffs provided initial responses and objections to BANA's written  
 23 discovery.
- 24 6. The Parties negotiated—and the Court entered—a stipulated protective order  
 25 governing the production of additional, confidential and sensitive documents.

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27 <sup>1</sup> Although this is the second request to take depositions outside the discovery period and fifth  
 28 request to extend the dispositive motion/pretrial order deadlines, this Court has extended  
 discovery six times. ECF No. 87.

7. Following entry of the stipulated protective order, all Parties supplemented their documentary productions with additional documents.
8. Plaintiffs filed their Motion to Compel Discovery and For Attorney's Fees (ECF No. 48) on May 26, 2020 and their Motion to Unseal Court Documents (ECF No. 52) on June 4, 2020 (the "Discovery Motions"). The Court denied both Discovery Motions in full by Order dated August 10, 2020 (ECF No. 77), and Plaintiffs filed an Objection to that Order on August 24, 2020 (ECF No. 78). BANA filed its response to the Objection on September 22, 2020, and the Objection is pending disposition with the Court.
9. On October 14, 2020, Plaintiff served BANA with their second set of requests for production.
10. On November 5, 2020, Plaintiffs served the report of their damages expert.
11. On November 13, 2020, BANA responded to Plaintiffs second set of requests for production.
12. On December 8, 2020, BANA deposed Plaintiff Richard Zeitlin.
13. On December 14, 2020, BANA deposed non-party witness Steve Riley.
14. On December 15, 2020, BANA deposed non-party witness Nick Marlow.
15. On December 22, 2020, BANA deposed non-party witness Julie Johnson.
16. On December 29, 2020, BANA served the report of its rebuttal expert.
17. On January 20, 2021, Plaintiffs deposed non-party witness Andrew Frey.
18. On January 21, 2021, Plaintiffs deposed non-party witness Darrick Martinez.
19. On January 26, 2021, Plaintiffs deposed BANA employee Benn Service.
20. On January 27, 2021, Plaintiffs deposed BANA employee Regina Forest.
21. On February 9, 2021, Plaintiffs deposed BANA employee Denise Watkins.

## II. Discovery to be Completed

The Parties anticipate that the following discovery will need to be completed prior to any dispositive briefing or trial:

- 1            1. Depositions of Parties and their experts. The depositions of the Parties' experts are  
 2            set for March 10 and 11, 2021. Under Rule 16(b)(4), the Parties obtained an order  
 3            from this Court permitting these depositions outside the close of discovery. ECF  
 4            No. 94. The deposition of BANA's 30(b)(6) witness and fact witness, BANA  
 5            employee Jean Miller, is scheduled for March 24, 2021. As part of this stipulation,  
 6            the Parties are seeking a similar order to conduct BANA's 30(b)(6) witness and  
 7            fact witness, BANA employee Jean Miller, deposition outside the close of  
 8            discovery.
- 9            2. Depositions of non-party witnesses. The Parties anticipate conducting the  
 10           depositions of non-party witnesses, including Ramona Brown and William  
 11           Pollock, on March 15, 2021 and March 17, 2021, respectively. Under Rule  
 12           16(b)(4), the Parties obtained an order from this Court permitting the Ramona  
 13           Brown deposition outside the close of discovery. ECF No. 94. As part of this  
 14           stipulation, the Parties are seeking a similar order to conduct the William Pollock  
 15           deposition outside the close of discovery.

16           **III. There is Good Cause under Rule 16(b)(4) to Take Depositions Outside the Close**  
 17           **of Discovery.**

18           Under Rule 16(b)(4) of the Federal Rules of Civil Procedure, "a schedule may be  
 19           modified only for good cause and with the judge's consent." As previously requested and  
 20           approved by the Court, the Parties intended to take the depositions of five witnesses outside of the  
 21           discovery period, but no later than March 15, 2021. ECF No. 94. Three out of the six remaining  
 22           depositions have been scheduled before March 15, 2021. However, the deposition of William  
 23           Pollock, which was scheduled for February 18, 2021, must be rescheduled until after March 15,  
 24           2021. Also, the depositions of BANA's 30(b)(6) witness and fact witness, BANA employee Jean  
 25           Miller, which were scheduled for March 2, 2021, must be rescheduled until after March 15, 2021.  
 26           Opposing counsel lost power for nearly one week during the weather events in Texas starting on  
 27           February 15, 2021 and these depositions had to be postponed. In addition, Mr. Pollock will be  
 28           undergoing shoulder surgery on March 2, 2021 and is unavailable until March 17, 2021. For

these reasons, there is good cause under Rule 16(b)(4) for the Parties to be permitted to take these depositions after the close of discovery.

#### IV. Good Cause Also Exists for Extending the Dispositive Motion and Pretrial Order Deadlines.

The proposed extension is necessary to give the Parties sufficient time to complete discovery before filing dispositive motions. Discovery was delayed when subpoenaed third parties indicated that they were not available prior to the close of discovery and Plaintiffs' counsel fell ill. Discovery was further delayed when Plaintiffs' counsel's offices and homes, located in Austin, Texas, lost power and water for nearly one week.

The Parties agree that the foregoing constitutes good cause for the extension requested herein. This is the Parties' fifth request to extend the deadline for dispositive motions and the pretrial order. This request is not made for any deleterious purpose or to cause delay and is made timely and in good faith.

#### V. Proposed Schedule

<u>Event</u>	<u>Existing Deadline</u>	<u>Proposed Deadline</u>
Close of Discovery	February 15, 2021	<b>Closed</b>
Dispositive Motions	March 22, 2021	<b>May 24, 2021</b>
Pretrial Order	April 19, 2021 or 30 days after a decision on any dispositive motion.	<b>June 23, 2021 or 30 days after a decision on any dispositive motion.</b>

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The Parties respectfully request that the Court enter this Stipulation as an order and extend the deadlines in the Scheduling Order as set forth herein. The Parties also stipulate and agree to take the deposition of William Pollock on March 17, 2021 at 9:00 a.m. Pacific Time and the depositions of BANA's 30(b)(6) witness and fact witness, BANA employee Jean Miller, on March 24, 2021, time to be determined.

**IT IS SO STIPULATED.**

Dated: March 1, 2021

THE BERNHOFT LAW FIRM, S.C.

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Dated: March 1, 2021

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N.A.*

**IT IS SO ORDERED**

UNITED STATES MAGISTRATE JUDGE

DATED: March 2, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing **STIPULATION AND ORDER EXTENDING DISPOSITIVE MOTION AND PRETRIAL ORDER DEADLINES (FIFTH REQUEST) AND PARTIES' SECOND REQUEST AND STIPULATION TO TAKE DEPOSITIONS OUTSIDE OF DISCOVERY PURSUANT TO RULE 16(b)(4)** with the Clerk of the Court for the U. S. District Court, District of Nevada by using the Court's CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

DATED: March 1, 2021

/s/Gaylene Kim-Mistrille  
An Employee of Snell & Wilmer L.L.P.

4816-5505-5581.2

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